



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/167778

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on August 27, 2015.

The issue for determination is whether the agency correctly determined the Medicaid Purchase Plan (MAPP) premium for petitioner effective September 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's gross monthly income is \$1779 in Social Security benefits.
3. On July 30, 2015 the agency issued a notice to petitioner stating that effective September 1, 2015, he would owe a MAPP premium in the amount of \$925.

DISCUSSION

The petitioner is eligible to receive benefits under the Medicaid Purchase Plan (MAPP), which allows disabled persons to work and receive MA if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. §49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. §49.472(4)(b). 150% of the federal poverty level in 2015 for a household of 1 is \$1471.25. That premium is 3½% of all earned income, but 100% of unearned income remaining after deducting \$20 plus an amount equal to state and federal SSI payments, which is currently \$836. Wis. Stat. §49.472(4)(a)1; See *Operations Memo No. 14-53*, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-53.pdf>. This combined deduction is known as the standard living allowance.

The federal poverty level is determined by the number of persons in the recipient's fiscal test group. Wis. Adm. Code, §DHS 103.04(9). The petitioner has one person in his fiscal test group. When determining whether the recipient's income exceeds 250% of the federal poverty level, agencies must allow a number of deductions. See *Medicaid Eligibility Handbook*, §26.5, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. Because the petitioner's income is below 250% of the federal poverty level even without these deductions, there is no need to review them. However, because his income puts him above the 150% FPL of \$1471.25, he must pay a premium.

The Wisconsin Statute sets forth the law on how to determine the premium:

(4) PREMIUMS.

(a) Except as provided in par. (b) and sub. (5), an individual who is eligible for medical assistance under sub. (3) and receives medical assistance shall pay a monthly premium to the department. The department shall establish the monthly premiums by rule in accordance with the following guidelines:

1. The premium for any individual may not exceed the sum of the following:

a. Three and one-half percent of the individual's earned income after the disregards specified in subd. 2m.

b. One hundred percent of the individual's unearned income after the deductions specified in subd. 2.

2. In determining an individual's unearned income under subd. 1., the department shall disregard all of the following:

a. A maintenance allowance established by the department by rule. The maintenance allowance may not be less than the sum of \$20, the federal supplemental security income payment level determined under 42 USC 1382 (b) and the state supplemental payment determined under s. 49.77 (2m).

b. Medical and remedial expenses and impairment-related work expenses.

2m. If the disregards under subd. 2. exceed the unearned income against which they are applied, the department shall disregard the remainder in calculating the individual's earned income.

3. The department may reduce the premium by 25% for an individual who is covered by private health insurance.

(b) The department may waive monthly premiums that are calculated to be below \$10 per month. The department may not assess a monthly premium for any individual whose income level, after adding the individual's earned income and unearned income, is below 150% of the poverty line.

Wis. Stat. §49.472(4)(a) and (b)

Agency workers are accordingly instructed under the MA policy to determine the premium in the following manner:

1. From gross monthly unearned income, subtract the following:
 - a. Special Exempt Income (15.7.2 Special Exempt Income).
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For MAPP , use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).
 - d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
 - e. Current COLA from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations can not be allowed in premium calculations.

The balance is the Adjusted Countable Unearned Income. This number may be a negative number.

2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.
3. Multiply the adjusted earned income by three percent (.03).
4. Add the results of #3 and #1 together.
5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

Medicaid Eligibility Handbook (MEH), §26.5, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

Under the budget prepared for petitioner, the evidence shows that the only deduction he was given credit for is the standard living allowance. However, I cannot tell if petitioner was requested to verify any of the other deductions. Petitioner did provide some evidence of his medical expenses at hearing, however, I cannot tell if they qualify under the MAPP policy. Those expenses are defined as follows:

Medical/remedial expenses (MRE) are used in:

1. The home and community-based waiver programs,
2. Patient liability calculations for residents of a medical institution, and
3. Cost share and *MAPP* premium calculations.

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

The following are examples of medical expenses:

1. Deductibles and copayments for Medicaid, Medicare, and private health insurances.
2. Health insurance premiums.
3. Bills for medical services that are not covered by the Wisconsin Medicaid program.

4. For purposes of meeting a Medicaid deductible, medical services received before the person became eligible for Medicaid. (Past medical bills cannot be used for MAPP premium calculations.)

Remedial expenses are costs incurred for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. These are expenses that are the responsibility of the member and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

Some examples of remedial expenses are:

1. Case management.
2. Day care.
3. Housing modifications for accessibility.
4. Respite care.
5. Supportive home care.
6. Transportation.
7. Services recognized under s.46.27, Wis. Stats.
8. Community Options Program, expenses that are included in the person's service plan.

Remedial expenses do not include housing or room and board services.

MEH, §15.7.3.

The petitioner also wanted some of his living expenses used as a deduction. For example, he cited a mortgage, condo fee, utilities and insurance. Under the deduction for Special Exempt Income, a deduction *may* be made for maintaining a home or apartment. However, there is no evidence to show that petitioner qualifies for this deduction as the evidence does not show him to be institutionalized. The policy states:

If a person residing in a medical institution has a home or apartment, deduct an amount from his or her income to allow for maintaining the home or apartment that does not exceed the *SSI* payment level plus the E supplement for one person (see [Section 39.4.1 EBD Assets and Income Table](#)). The amount is in addition to the personal needs allowance (see [Section 39.4.2 EBD Deductions and Allowances](#)). It should be enough for mortgage, rent, property taxes (including special assessments), home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs.

Make the deduction only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and
2. The person's *spouse* is not living in the home or apartment.

Deduct this amount for no more than six months. If the person is re-admitted to the institution, grant a six month continuance. A physician must again certify that he or she is likely to return to the home or apartment within six months.

The home maintenance allowance can be granted at any time. It is not limited to the first six months the person resides in the medical institution.

Example 1: Bob entered the nursing home in June 2013 as a private pay patient. In June 2014, he qualifies for Medicaid and is potentially eligible for the home maintenance allowance. Bob's doctor says he is expected to return home

by November 2014. He is eligible for a home maintenance deduction from his income, when determining the amount of his income available for his cost of care, starting in June 2014.

MEH, §15.7.1.

Because I cannot tell if the petitioner was given an opportunity to verify these potential deductions, I am remanding the matter so that the agency can request and verify the MAPP deductions, and redetermine the premium. The agency will then issue a notice to petitioner stating what, if any, premium he owes. If there are no other deductions available to him then what has already been given, then the agency has calculated his premium correctly at \$925 as his adjusted countable unearned income of \$943 requires a premium of \$925 when compared to MAPP Premium table at *MEH* §39.10. The notice issued to petitioner will allow him to appeal the matter again if he disagrees with the agency's determination. However, I add for petitioner's information that I am not able to change the premium policy or its effect on MAP members based on a fairness argument. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly determined the petitioner's Medicaid Purchase Plan premium of \$925 as it has not shown that petitioner was requested to verify the available deductions.

THEREFORE, it is

ORDERED

The matter is remanded to the agency to request verification from the petitioner of the available MAPP premium deductions within 10 days of the date of this decision, giving petitioner the required 10 days to produce any verifications and return them timely to the agency. The agency shall then redetermine the premium for MAPP, and issue a notice of decision regarding same, within 10 days of the date that petitioner provides any verification of the deductions.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

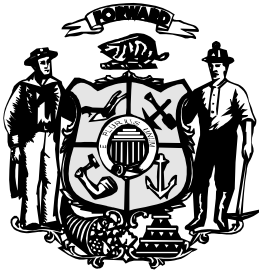
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of September, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 8, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability